

RS-002, "PROCESSING APPLICATIONS FOR EARLY SITE PERMITS"

ATTACHMENT 2

2.1.2 EXCLUSION AREA AUTHORITY AND CONTROL

REVIEW RESPONSIBILITIES

Primary - Probabilistic Safety Assessment Branch (SPSB)

Secondary - Emergency Preparedness Project Office (EPPO)

I. AREAS OF REVIEW

For this section of the site safety assessment for an early site permit (ESP) application, the applicant's legal authority to determine all activities within the designated exclusion area is reviewed. The regulations at 10 CFR 100.3 require that a reactor licensee have authority to determine all activities within the designated exclusion area, including the exclusion or removal of personnel and property.

In any case where the applicant does not own all the land, including mineral rights, within the designated exclusion area, assistance may be required of the Office of the General Counsel (OGC) in determining whether or not the designated exclusion area meets the requirements of 10 CFR Part 100 (Ref. 1). Also, in some cases public roads which lie within the proposed exclusion area may have to be abandoned or relocated to permit construction of a nuclear power plant or plants of specified type (or falling within a PPE) that might be constructed on the proposed site. Assistance from OGC may be required to ensure that no legal impediments to such abandonment or relocation are likely to ensue. Part 100 permits the exclusion area to be traversed by a highway, railroad, or waterway provided arrangements are made to control these areas in event of an emergency.

Activities that may be permitted within the designated exclusion area, and that will not be related to routine operation of a nuclear power plant or plants of specified type (or falling within a PPE) that might be constructed on the proposed site are reviewed. Review should include the type of activity, its specific location within the exclusion area, the number and kinds of persons engaged in the activity, and the frequency and length of time the activities are to be permitted. The SPSB (with input from the EPPO) will determine whether individuals associated with unrelated activities within the exclusion area can be evacuated prior to receiving doses in excess of the reference values of 10 CFR 50.34(a)(1).

II. ACCEPTANCE CRITERIA

Acceptance criteria are based on meeting the relevant requirements of 10 CFR Part 100 with respect to the applicant's legal authority with the designated exclusion area. 10 CFR Part 100 (Ref. 1) in Section 100.3 states:

Exclusion area means that area surrounding the reactor, in which the reactor licensee has the authority to determine all activities including exclusion or removal

of personnel and property from the area. This area may be traversed by a highway, railroad or waterway, provided these are not so close to the facility as to interfere with normal operations of the facility and provided appropriate and effective arrangements are made to control traffic on the highway, railroad, or waterway, in case of emergency, to protect the public health and safety.... Activities unrelated to operation of the reactor may be permitted in an exclusion area under appropriate limitations, provided that no significant hazards to the public health and safety will result.

To meet the requirements of 10 CFR Part 100 the applicant must demonstrate, prior to issuance of an ESP, that it has the authority within the exclusion area as required by Section 100.3, or must provide reasonable assurance that it will have such authority prior to start of construction. Absolute ownership of all lands within the exclusion area, including mineral rights, is considered to carry with it the required authority to determine all activities on this land and is acceptable.

Where the required authority is contingent upon future procurement of ownership (e.g., by eminent domain proceedings), or by lease, easement, contract, or other means, the exclusion area may be acceptable if OGC can determine that the information provided by the applicant provides reasonable assurance that the required authority will be obtained prior to start of construction. In cases where ownership and control is to be acquired or completed during a construction period, a special review by OGC will be required. Also, in cases of proposed public road abandonment or relocation, OGC should determine that there is sufficient authority or that sufficient arrangements have been made to accomplish the proposed relocation or abandonment. At the combined license (COL) stage of review, the applicant should have completed arrangements to determine all activities within the exclusion area. The applicant will not be permitted to load fuel until exclusion area authority and control, including all transfers of title, easements, lease arrangements, public road abandonments or relocations, as applicable, are completed.

To meet the exclusion area control requirement of 10 CFR 100.21(a) and 100.3, it is not necessary that an ESP applicant demonstrate total control of the property prior to issuance of an ESP. However, the applicant should provide the staff sufficient information to determine that there is reasonable assurance that, prior to commencing activities allowed by 10 CFR 52.25, the applicant will have the authority to control all activities within the exclusion area, including the exclusion or removal of people and property from the area. In addition, where the applicant submits a redress plan, there should be reasonable assurance that the applicant will have the right to carry out that redress plan. In determining what constitutes reasonable assurance, the staff will look to precedent set in previous NRC decisions involving the issuance of construction permits and limited work authorizations.¹ In the event that an ESP applicant does not have the control required by 10 CFR 100.21(a) and 100.3, but provides reasonable assurance that it will

¹ See, e.g., *Washington Public Power Supply System* (WPPSS Nuclear Project Nos. 3 and 5), LBP-77-25, 5 NRC 964 (April 8, 1977); *Duke Power Company* (Cherokee Nuclear Station, Units 1, 2, and 3), LBP-76-18, 3 NRC 627 (May 21, 1976); and *Duquesne Light Company, et al.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-74-76, 8 AEC 701 (October 20, 1974).

acquire such control, a condition could be placed in the ESP requiring the applicant to notify the staff that the applicant has indeed acquired such control and the basis for that conclusion.

Activities unrelated to operation of a nuclear power plant or plants of specified type (or falling within a PPE) that might be constructed on the proposed site within the exclusion area are acceptable provided:

(a) Such activities, including accidents associated with such activities, represent no significant hazard to a nuclear power plant or plants of specified type (or falling within a PPE) that might be constructed on the proposed site, or are to be accommodated as part of the plant design basis at the COL stage. (See Section 2.2.3 of this review standard.)

(b) The applicant is aware of such activities and has made appropriate arrangements to evacuate persons engaged in such activities, in the event of an accident, and

(c) There is reasonable assurance that persons engaged in such activities can be evacuated without receiving radiation doses in excess of the reference values of 10 CFR 50.34(a)(1).

Where the designated exclusion area extends into bodies of water such as a lake, reservoir, or river which is routinely accessible to the public, the reviewer should determine that the applicant has made appropriate arrangements with the local, state, Federal, or other public agency having authority over the particular body of water. The reviewer should determine that the arrangements made provide for the exclusion and ready removal in an emergency, by either the applicant or the public agency in authority, of any persons on those portions of the body of water which lie within the designated exclusion area.

References 2, 3, and 4 contain pertinent Atomic Safety and Licensing Board (ASLB) and Atomic Safety and Licensing Appeal Board (ASLAB) decisions which deal with exclusion area determinations in contested cases.

III. REVIEW PROCEDURES

Selection and emphasis of various aspects of the areas covered by this review standard section will be made by the reviewer on each case. The judgment on the areas to be given attention during the review is to be based on an inspection of the material presented, the similarity of the material to that recently reviewed on other nuclear power plants, and whether items of special safety significance are involved.

The reviewer should determine the basis on which the applicant claims authority within the exclusion area. If absolute ownership of all lands, including mineral rights, within the area is demonstrated, the acceptance criteria are satisfied. If any other method is claimed as providing the required authority, a memorandum should be prepared for OGC containing all of the appropriate information in the safety assessment, including copies of applicable safety assessment pages and figures, and requesting a written response as to whether or not the applicant's claimed authority meets the requirements of 10 CFR 100.3. In any case where there are technical reasons which the reviewer believes make the applicant's proposed method unacceptable, these reasons should be described and discussed in the memorandum. If the exclusion area extends into a body of water such as a lake, reservoir, or river, the area of the body of water encompassed should be reviewed against the guidelines of Part 100 regarding

control of access and activities unrelated to operation of a nuclear power plant or plants of specified type (or falling within a PPE) that might be constructed on the proposed site. The extent of the exclusion area over a waterway should be reviewed on a case-by-case basis.

The memorandum should also include information in the safety assessment which describes the applicant's plans, procedures, and schedule for obtaining any abandonment or relocation of public roads which may be necessary. At the COL stage, review will emphasize those areas where the applicant did not possess absolute authority at the ESP review.

If the designated exclusion area is traversed by a highway, railway, waterway, or other transportation route accessible to the public, the reviewer should determine that the applicant's emergency plan includes adequate provisions for control of traffic on these routes in the event of an emergency. At the ESP stage, a finding that such provisions are feasible is adequate.

IV. EVALUATION FINDINGS

The reviewer verifies that sufficient information has been provided, and that his evaluation is sufficiently complete and adequate to support conclusions of the following type, to be included in the staff's safety evaluation report:

As set forth above, the applicant has appropriately described the exclusion area, the authority under which all activities within the exclusion area can be controlled, and the methods by which access and occupancy of the exclusion area can be controlled during normal operation and in the event of an emergency situation. In addition, the applicant has the required authority to control activities within the designated exclusion area, including the exclusion and removal of persons and property, and has established acceptable methods for control of the designated exclusion area. Therefore, the staff concludes that the applicant's exclusion area is acceptable and meets the requirements of 10 CFR Part 100.

V. IMPLEMENTATION

The following is intended to provide guidance to applicants and licensees regarding the NRC staff's plans for using this section of this review standard.

This section will be used by the staff when performing safety evaluations of ESP applications submitted by applicants pursuant to 10 CFR Part 52 (Ref. 6). Except in those cases in which the applicant proposes an acceptable alternative method for complying with specified portions of the Commission's regulations, the method described herein will be used by the staff in its evaluation of conformance with Commission regulations.

VI. REFERENCES

1. 10 CFR Part 100, "Reactor Site Criteria."
2. The Cleveland Electric Illuminating Company, et. al. (Perry Nuclear Power Plant, Units 1 and 2), "Supplemental Partial Initial Decision, Site Suitability and Environmental Matters," LBP-74-76, 8 AEC 701 (October 20, 1974).

3. Southern California Edison Company, et. al. (San Onofre Nuclear Generating Station, Units 2 and 3), "Decision," ALAB-248, 8 AEC 951 (December 24, 1974). |
4. Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), "Decision," ALAB-268, 1 NRC 383 (April 25, 1975). |
5. 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." |
6. 10 CFR Part 52, "Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants." |